

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 2816/IBC/MB/2019

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and
Bankruptcy (Application to
Adjudication Authority) Rule 2016)

In the matter of

**Mr. Vivek Agarwal, Proprietor of
M/s Premier Steels**

Shop No. 8, Loha Mandi, Ghaziabad,
U.P. 201009

.....**Operational Creditor**

Vs

**Universal Construction Machinery
and Equipment Limited**

Universal House, Warje Jakatnaka,
Naka, Kothurd Pune- 411038

.....Corporate Debtor

Order delivered on: 26.07.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

For the Applicant: Ms. Gunjan Mittal, Advocate

For the Respondent: Mr. Dormaan Dalal i/b Reddy n Reddy,
Advocate

Per: *Shri Chandra Bhan Singh, Member (Technical)*

ORDER

1. This Company petition is filed by Mr. Vivek Agarwal, Proprietor of M/s Premier Steels (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Universal Construction Machinery and Equipment Limited (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Operational Creditor. This petition has been filed by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 21,63,588/- only.

BRIEF FACTS OF THE CASE:

- i. During the year 2012, Corporate Debtor being a well known name in the industry was keen and desirous of purchasing Iron & Steel Materials for its situated unit at Rudrapur for manufacturing of construction machinery contacted operational creditor for discussion on the supply of goods and after being satisfied with the price and quality of the goods, corporate debtor has been placing the purchase orders for supply of goods since 2012 to be delivered at its site situated at Village-Lalpur Nh-74, Rudrapur, Kichha, Barilly Road, Distt. Udham Singh Nagar, Uttarakhand.
- ii. Based upon the understanding as arrived between both the parties, upon receipt of the written purchase orders for

purchase of M.S. Steel Items, operational creditor supplied the goods under three invoices. Details of goods supplied under three invoices are as below:

Sr. No.	Purchase order No.	Invoice No.	Invoice Date	Invoice Amount
1.	RU/066-18	GST/18-19/074	23.05.2018	5,71,163/-
2.	RU/066-18	GST/18-19/082	28.05.2018	6,95,961/-
3.	RUD/00000369	GST/18-19/101	13.06.2018	8,96,464/-
	TOTAL			21,63,588/-

- iii. The goods supplied under the aforesaid invoices total amounting to Rs. 21,63,588/- were duly delivered at the designated site of the corporate debtor who used the same for its business purposes but did not pay a single penny against the said issued invoices.
- iv. The Corporate Debtor upon receipt of the goods supplied under the issued invoices. Even since receiving the goods and till date the Corporate Debtor has not raised any dispute/objection with regard to the quantity and specifications as mentioned in the purchase orders and also with regard to the quality of the supplied goods and has used the same for its business purposes.
- v. Debt fell due on 13.06.2018 i.e. the last date of invoices raised in favour of the corporate debtor.
- vi. The ledger accounts as maintained by the Operational Creditor reflects that as on 29.04.2019, balance principal

amount of Rs. 21,63,588/- is due and payable by the corporate debtor against the supplied goods.

vii. The Operational Creditor served the demand notice on 30.04.2019 in form-4 in compliance of Section 8(1) of the Insolvency and Bankruptcy Code, 2016 seeking principal amount of Rs. 21,63,588/- at the registered office, site address of the corporate debtor as well as the directors of the corporate debtor. The notice sent at all the addresses were duly received at their respective addresses. Upon receipt of notice, no reply has been furnished by the Corporate Debtor or the corporate debtor has not raised any defence with regards to the quantity and quality of the supplied goods.

FINDINGS

1. This petition has been filed on 17.07.2019 by Mr. Vivek Agarwal, Proprietor of M/s Premier Steels, Operational Creditor against Universal Construction Machinery and Equipment Limited under Section 9 of the Code for a total debt of about Rs.21.63 lakhs by way of outstanding invoices for goods supplied to the Corporate Debtor. As a result of which 3 invoices due from the Corporate Debtor between 23.06.2018 to 13.06.2018.
2. The Bench notes that the Operational Creditor has earlier charged an interest @ 12% per annum on the outstanding amount. However, in the hearing of this Bench on 29.01.2020, it was noticed that there were no interest provisions in the invoices and therefore the Bench had directed the petitioner to rectify this defect and file a fresh Form within 7 days. This was duly complied by the Operational Creditor by filing necessary amendment by way of an additional affidavit on 17.02.2020.

3. This matter had come up before this Bench on several occasions starting from 03.01.2020. It is also noted that this Bench had given opportunity to the Corporate Debtor to settle the matter with the Operational Creditor. However, the Corporate Debtor neither settled the matter nor filed any reply. In view of this, the Bench on 12.07.2021 finally heard both the parties.
4. The Bench notes that all the 3 invoices are in order along with delivery report of the goods as per invoices. The Bench also notes that at no point of time the Corporate Debtor had raised any dispute on the transaction. The Operational Creditor has also submitted the Ledger Account of the Corporate Debtor as appearing in the books of accounts of the Operational Creditor. In the Books of Accounts, it is clearly reflected that as on 29.04.2019, the total payment due from the Corporate Debtor was Rs. 21,63,588/-. As mentioned earlier, the Bench notes that no reply has been filed. Even in the written submissions the only plea which has been taken by the Corporate Debtor is that since the total amount due is less than one crore, therefore, in terms of notification dated 24.03.2020 of Ministry of Corporate Affairs where the threshold limit was increased to Rs. one crore, the said petition, as per the corporate debtor is not admissible.
5. In this regard, it is very clear that the notification of 24.03.2020 raising the threshold limit to Rs. one crore is only applies from the prospective date.
6. As far as this petition is concerned, it was filed on 17.07.2019 and the default had occurred before that. Therefore, the said MCA Circular on 24.03.2020 regarding enhancement of threshold limit is not applicable. In view of this, the Bench is

of clear view that there is a debt in terms of Section 5(21) of IBC, 2016 and there is a default in terms of Section 3(12).

7. Under these circumstances, this tribunal is of the considered view that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) -2816(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Universal Construction Machinery and Equipment Limited.
- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Ms. Kala Agarwal** (agarwalkala@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00841/2019-2020/12734 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal,

arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall

provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)